

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10512 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

VICTOR @ RAJKUMAR @ RAJU @ RAJESH JASHPAL RAJESHWAR

Versus

COMMISSIONER OF POLICE

Appearance:

MR DM AHUJA with MR RAJESH M AGRAWAL for Petitioner
MR MR ANAND, GP with MS AMIBEN YAGNIK, AGP for
Respondents No. 1, 2, 3

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 10/02/97

ORAL JUDGEMENT

In this petition under Article 226 of the Constitution of India the petitioner-detenu challenged the detention order dated 30/8/1996 rendered by the respondent no.1 u/S. 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (Act No. 16 of 1985) (for short 'the PASA Act').

2. The grounds on which the order of detention is passed against the petitioner appear at Annexure-C. They inter-alia indicate two cases registered against the petitioner, one being C.R. No. 159/95 of Astodia Police Station inter-alia under the provisions of sections 392, 394, 120(B) of the Indian Penal Code, and another being C.R. No. 120/96 of Vatva Police Station inter-alia under sections 395, 365 and other provisions of the Indian Penal Code read with section 135(1) of the Bombay Police Act. It is not in dispute that the petitioner has been under judicial custody in so far as the C.R. No. 159/95 is concerned. It is also not in dispute that that offence was registered on or around 14/11/1995 against the petitioner and other persons including one Mr. Mahendrasinh Jala being the co-accused. The said Mahendrasinh Jala was preventively detained by order of detention dated 1/7/1996 and in Special Civil Application No. 7053 of 1996 the said order of detention came to be set aside by the decision dated 25/11/1996 (Coram : N.N. Mathur, J.) on the ground that in the facts of the case the said detenu could not be said to be a dangerous person within the meaning of section 2 (c) of the PASA Act.

3. With regard to the aforesaid second C.R. No. 120/96 the petitioner herein has pressed into service the ground of delay appearing in para. 15.A of the petition. While referring to the first C.R. registered on 14/11/1995 the petitioner has asserted that the second case was registered on 20/3/1996. The petitioner was released on bail in so far as that C.R. was concerned, on 30/8/1996. It is submitted that on the same day the impugned order of detention was passed while relying upon the statements of the witnesses recorded on 23/8/96, 24/8/1996, 25/8/1996 and 26/8/1996 in respect of the incidents dated 5/4/1996 and 15/4/1996. Thus, the dates, namely 20/3/1996 of the second C.R. and 5/4/1996 and 15/4/1996 of the incidents with regard to which the witnesses have given their statements do not provide a live link between the said incidents and the last registered case and the order of detention dated 30/8/1996. It is, therefore, submitted that the impugned order of detention suffers from the vice of delay. In support of this submission a decision of the Hon'ble Supreme Court in the case of P.N. Paturkar v. S. Ramamurthi reported in AIR 1994 SC 656 has been relied upon. In the present case also there is a delay of around four months from the date of the last registered case and the incidents referred to by the witnesses. In P.N. Paturkar's case statements of witnesses referred to

in the grounds of detention were obtained after the detenu was released on bail in all cases. Whereas in the present case the statements of the witnesses were obtained soon before the petitioner was enlarged on bail in the last mentioned case, although he was in judicial custody in so far as the first case was concerned. It is true that delay ipso facto in passing an order of detention after an incident is not fatal to the detention of a person, for, in certain cases delay may be unavoidable and reasonable. However, what is important is that delay must be satisfactorily explained by the detaining authority. In the present case the delay has not been explained. It has not been shown that the live link between the prejudicial activities and the purpose of detention has not been snapped on account of passage of time and has survived. In the absence of any such material the impugned order of detention is required to be set aside on the ground of delay as aforesaid.

4. In my opinion, P.N. Paturkar's case (*supra*) would apply to the facts of this case. Hence, following order is passed :-

The impugned order of detention is hereby quashed and set aside. The petitioner-detenu - Victor alias Rajkumar alias Raju alias Rajesh Jashpal Rajeshwar Jacob Paul Cristian shall be forthwith set at liberty, if he is not required to be detained in any other case. Rule made absolute accordingly.

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